

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1739 – SB 2652

March 28, 2018

SUMMARY OF ORIGINAL BILL: Requires state agencies, other than institutions of postsecondary and higher education to, prior to filing a rule with the Secretary of State, submit to the Fiscal Review Committee (FRC) and Government Operations Committees of the Senate and House of Representatives (GOC) an economic impact analysis of the non-emergency rule on persons residing in or doing business in the state and who are subject to compliance with the rule. Authorizes the GOC to request the preparation of an independent economic impact analysis be conducted by the FRC. Establishes where costs associated with such analysis will be borne in certain circumstances.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Revenue – \$741,200/Recurring/Fiscal Review Committee

Increase State Expenditures – \$330,000/One-Time/General Fund
\$5,213,600/Recurring/General Fund
\$370,600/Recurring/General Assembly
Exceeds \$100,000/One-Time/Fiscal Review Committee
Exceeds \$741,200/Recurring/Fiscal Review Committee

SUMMARY OF AMENDMENT (016204): Deletes and replaces all language after the enacting clause such that the substantive changes (1) require certain state agencies to file, with the GOC, an estimate of total compliance and implementation costs on small businesses affected by the rule as well as the number of those affected by the rule prior to filing the rule with the Secretary of State, (2) delete provisions authorizing the GOC to request preparation of an independent economic impact analysis be conducted by the FRC, (3) delete provisions establishing where costs associated with such analysis will be borne in certain circumstances.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Other Fiscal Impact – Due to the uncertain complexity of the additional responsibilities and the extent to which certain agencies will be impacted, there may be additional state expenditures incurred in order to comply. Future interpretation or expansion of what is requested of agencies may result in the need to contract for services.

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Assumptions for the bill as amended:

- Pursuant to the 2006 Executive Order Number 38 by former Governor Bredesen, state agencies were required to, prior to initiating a rulemaking process, conduct a review of whether any rule under consideration affects small businesses. As part of such review, each agency was required to prepare an economic impact statement regarding a rule's impact on small businesses.
- Public Chapter 464 of the Public Acts of 2007 enacted the *Regulatory Flexibility Act* of 2007 (Tenn. Code Ann. §§ 4-5-401 through 4-5-404), to essentially codify the intent of the executive order. Pursuant to the Act, each state agency is required to prepare an economic impact statement as an addendum for each rule that is deemed to affect small businesses. This requirement does not apply to emergency rules, rules that are federally mandated, or rules that substantially codify existing state or federal law. The economic impact statement is required to include the following:
 - The type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;
 - The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule;
 - A statement of the probable effect on impacted small businesses and consumers;
 - A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small businesses;
 - A comparison of the proposed rule with any federal or state counterparts; and
 - Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.
- The proposed language as amended requires each agency to prepare an estimate of the total compliance and implementation costs on small businesses, if any, affected by the rule, and the number of those affected by the rule and any assumptions and reasoning upon which the estimate is based. This requirement does not apply to emergency rules, rules that are federally mandated, or rules regarding institutions or postsecondary and higher education.
- According to the Secretary of State's Office, there were 263 rules filings in 2017; and 248 rule filings in 2016 which were non-emergency and were not filed by an institution of postsecondary higher education. It is unknown how many such filings were the results of a federal mandate.
- No parameters are provided as to the depth of information which will be required within the compliance and implementation cost estimate.
- Due to uncertainty regarding the complexity of additional responsibilities and the extent to which certain agencies will be impacted, there may be additional state expenditures incurred in order to comply. Future interpretation or expansion of what is requested of agencies may result in the need to contract for services.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink that reads "Krista M. Lee" followed by a small, stylized monogram or initials "RNC".

Krista M. Lee, Executive Director

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